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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,249

08/06/2003

Donald C. Roe

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01/09/2008

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/635,249

Applicant(s)

ROE ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 October 2007 has been entered.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

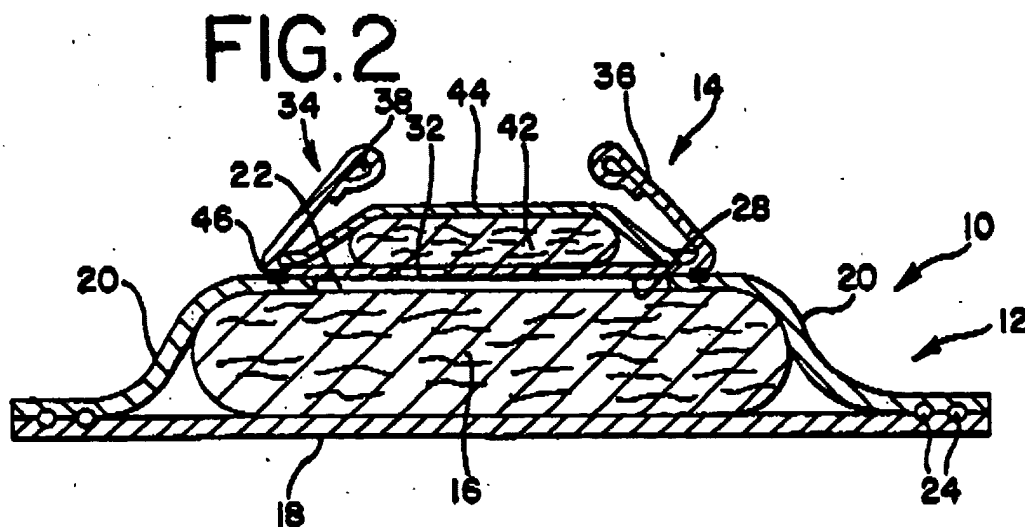
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 17-20 rejected under 35 U.S.C. § 103(a) as being unpatentable over Zajackowski (US 5,236,428 A) in view of Brunner *et al.* (US 5,681,298 A; hereinafter "Brunner")

Regarding claim 17, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18); a topsheet (20) joined to the backsheet (18); an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20); and

a auxiliary absorbent element (14) disposed on the topsheet (20) along the longitudinal axis, the auxiliary absorbent element (14) includes a permeable layer (44) having a body facing surface, a absorbent substance (42) disposed on the permeable layer (44), and an impermeable layer (28) partially wrapped around the permeable layer (44) such that longitudinal edges (36) of the impermeable layer (28) stop short of meeting, leaving a center portion of the body facing surface of the permeable layer (44) exposed (see figure 2, *infra*).



Zajackowski does not disclose that the absorbent substance has a negative heat of solution (is endothermic) and is responsive to contact with urine to absorb heat.

Brunner teaches a diaper (20) that has a urine-sensitive endothermic temperature change member (22) located immediately under a topsheet (58)(col. 5, line 23-col. 6, line 56). This element causes a cooling sensation to indicate to a wearer of the article that urination has occurred.

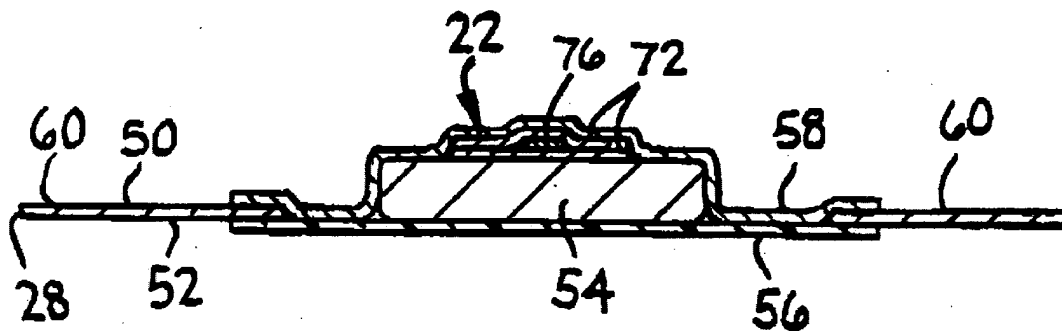


FIG. 2

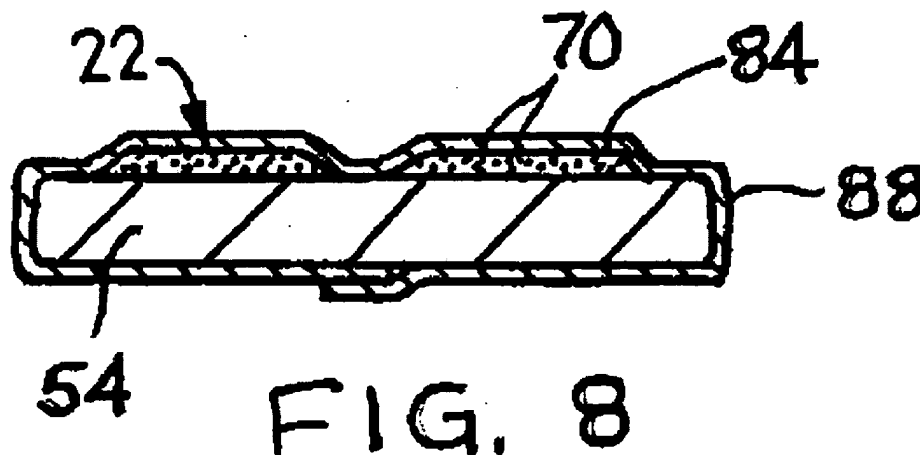
At the time of the invention, it would have been obvious for one of ordinary skill in the art to place the temperature change member of Brunner under the topsheet of the diaper of Zajackowski in order to provide a means of alerting a wearer of the device that urination has occurred. In this combination, Zajackowski's auxiliary absorbent element combined (14) with Brunner's temperature change member (22) is construed as a temperature change element.

Furthermore, where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35

U.S.C. § 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007)(citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent persuasive evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007)(citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396). Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Regarding claim 18, Brunner teaches a temperature change substance (84) on a body-faceable surface of the permeable layer (58) in parallel regions (142, 143) covered by the longitudinal edges (36) of the impermeable layer (28)(see figure 8, *infra*).

Regarding the “body facing surface of the permeable layer,” this layer is capable of being positioned such that either flat surface can face a human body.



Further regarding claim 18, Zajackowski teaches impermeable side edge barriers (134) that can cover the topsheet and anything on or under sheet (44).

Regarding claim 19, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18) ; a topsheet (20) joined to the backsheet (18);

an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20) and impermeable barrier leg cuffs (28, 36) disposed on the topsheet (20) parallel to the longitudinal axis and auxiliary absorbent elements (44, 142, 143) disposed on the barrier leg cuffs (28, 36), each of the auxiliary absorbent elements (44, 142, 143) includes a permeable layer (44) having a body-faceable surface, an impermeable layer (28) formed by the barrier leg cuff (28, 36).

Further regarding claim 19, Brunner teaches a temperature change substance (84) disposed on a permeable layer (72).

Regarding claim 20, Zajackowski teaches an auxiliary absorbent element (42) disposed between the permeable layer (44) and the leg barrier cuff (28, 36)(see figure 2, supra). Brunner teaches that the temperature element may be located under an permeable element (58).

Allowable Subject Matter

Claims 12-14 and 16 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

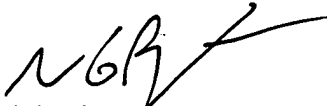
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
6 January 2008

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

